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Who, Why and How : Assessing the Legitimacy of Secession

Josette BAER

Abstract

Since the breakdown of bipolarity, the international community had to cope with independence movements spreading in Eastern, Central and Southeastern Europe. Given the peculiar coercive character of the Soviet and Yugoslav Federations and the Soviet Union's hegemonial rule in Central Europe, the wish for independent statehood can be understood as a sum of single secessionist movements. This article investigates secession as a moral problem of public international law; it also attempts to define normative criteria for the assessment of secessionist legitimacy. What conditions are required for a legitimate secession? On what political, social or historical characteristics should a legitimate secession be based in order to obtain international recognition? The analysis is carried out on three levels: legitimacy of the actors (Who), legitimacy of the secessionist argument (Why) and procedural legitimacy (How). The analysis is illustrated by three examples of recent secessionist movements: Slovakia, FYR Macedonia and Chechnya.

Introduction¹

What is secession? How is it conceived by public international law? How does it start and when is it accomplished? Does it mean "self-determination plus territorial sovereignty" in the sense of "exit and statehood"? Or should it be understood as "exit and integration" in the sense of a mere exchange of sovereign rule to which the entity in question wishes to submit itself? And, when dealing with the question, whether a distinct social entity has the right to "exit" or not, which are the principles applied by public international law? These are the issues I want to address.

¹ This article represents a contribution to the ongoing SNSF research project "Normative principles in International Politics". The project is led by Prof. G. Kohler and PD U. Marti, Chair of Political Philosophy, University of Zurich.

Let me make some introductory remarks. According to the prevailing doctrine of international law, secession is defined as “the separation of part of the territory of a state which originally takes place *in the absence of consent of the previous sovereign*” (emphasis added) (Haverland 1987: 384). Due to the lack of descriptive clarity, “secession” seems to be a term with negative connotations; the term evokes the picture of a social entity’s illegitimate political separatism close to treachery. Also, it entails an illegal element since secession is connected with the breaking of contracts and commitments. History’s best-known example for a failed secession is the American Civil War, which was caused by the Southern states’ wish to withdraw from the Union. Based on the argument that slavery as a source of economic welfare was unjust and Southern self determination was enjoyed by the white community only, the Northern prevention of secession was legitimate according to the moral criteria of equality of men fixed in the constitution. Focussing on the changes of the European political landscape after 1989, the break up of the Soviet Federation, her Central European hegemony and the Yugoslav Federation have been described as a sum of single peripheral secessions (Buchanan 1991: 14-15). In contrast to the American secession, the “exit” claims of the various territorial and social entities, however, crucially differed. Based on the wish for self-determination, the underpinning argument read that the prevailing sovereignty lacked legitimacy. Legally fixed in the federative constitutions and the block treaties, the communist parties’ rule and sovereignty nevertheless had been achieved in an unjust way lacking the explicit, free and open consent of the ruled. Regardless whether the leave of the Federation or the block alliance was concerned, independent statehood was regarded as reward for unjust rule by the central and south Europeans. That was the reason why the entities wishing to exit preferred to use terms such as “national sovereignty” or “independent statehood”. Given these two different cases of the concept “secession”, I shall in the following show how secession is regarded by international law.

Given the distinct fashion how international law deals with the principle of self-determination, “secession plus state-formation” represents a threat to the international stability since it is diametrically opposed to the principle of equal territorial sovereignty of the states. According to this “Janus-faced” nature of self-determination, international law has traditionally acknowledged cases of secession by virtue of the evident presence of elements constitutive for state sovereignty (Haverland 1987: 385): territory (Staatsgebiet), nation (Staatsvolk) and governmental rule (Staatsgewalt) (Verdross, Simma 1984: 223ff.). A further peculiarity lies in the absence of a clear definition of the term “nation”. Due to the historical development of 19th century nationalist movements, the claim for sovereignty was mostly based on the national argument. I will not attempt to discuss the term “nation” in

this paper. I conceive of the self-ascription of being a nation as the core element of an entity's self-determination. Also, according to international law, the principle of self-determination excludes *a priori* the definition of "nation" as entity entitled to a state of its own. For the sake of conceptual clarity, I therefore prefer to keep to a neutral fashion speaking of an association of citizens inhabiting a distinct territory and sharing the same political interests: change of citizenship and transfer of sovereignty. Thus, for the purpose of this paper, the term "polity" seems appropriate.

A further topic relevant for secessionist legitimacy is not so much, whether the seceding polity is characterized by a noticeable homogeneity in culture, custom or language, but rather, how the new state will relate to the international community. As international law lacks the general right of secession, "self-determination via statehood" depends virtually on the recognition of third states and the United Nations. However, this seems controversial: while the adherents of the constitutive theories regard recognition as a constitutive element of statehood, the theorists of the declaratory principle conceive of recognition only as a declaratory act and statehood *per se* as self-sufficient (Haverland 1987: 388). I will not go in depth of this judicial discussion; from the above said it must be clear, that I conceive of international recognition as crucial in this matter. Apart from the absence of a right of secession, what can secession entail? Let me in the following explain, what I mean by "secession" and what not.

It has been stressed that secession should be analyzed separately from state-formation, since both movements represent distinct processes (Buchanan 1991: 22). In reference to the above quote of international law, the goal of secession consists in the change of sovereignty. Therefore, I understand "secession" as "secession plus consequence" since it is directed toward the second step of establishing the new sovereign. There are further two types of "secession plus consequence": *secession plus state-formation* and *secession plus integration*. The latter represents the case in which entity A claims to withdraw from the originary state M in order to integrate to state B. The goal of this type of secession consists in the merger with another state whose sovereignty is preferred. Since such a scenario is usually related to cultural and ethnic entities who wish to unite with the 'mother nation', which is considered to be their ancestor, the pre-secession state is faced with a problem of irredenta. Irredentist secessionist movements are characterized by the active involvement of the "mother nation" on behalf of the co-nationals abroad. Therefore one could speak of a situation of *competitive sovereignty* between two states. As "secession plus integration", or more precisely, the irredentist community's secession and following union with the "mother state" immediately relates to the difficult definition of "na-

tion" and "minority", I will not deal with this case here. Let me therefore precise, what I mean by "secession plus state-formation".

First, "secession plus state-formation" is based on the polity's claim for exerting sovereignty over the territory it inhabits, which due to whatever historic reasons had been denied in the past (for example Israel, Slovakia). The second case represents the claim for regaining formerly existent sovereignty once illegitimately abolished (for example, Lithuania, Estonia and Latvia). I shall deal with both of these cases in this investigation.

For the sake of clearly limited terms, let me shortly explain, why I do not consider "secession" as appropriate a term when dealing with supranational political buildings like the European Union or the Commonwealth of Independent States. One could argue that the decision to leave such a structure represents indeed a secession since it zeals at the regaining of the amount of sovereignty once ceded by virtue of the membership treaties agreed upon. However, the crucial thing in this matter has to do with the nature of these structures and the amount of sovereignty: the amount of sovereignty ceded to a supranational building differs quantitatively from sovereignty established by state-building. It also differs qualitatively, because the decision to enter the union has been met by sovereign states which expressed their consent by committing themselves to agreements whose details and conditions they were able to negotiate. Also, the notion of citizenship is different; a state's exit from EU is linked with the loss of distinct rights formerly granted by Union citizenship while state citizenship remains untouched. In contrast, the secessionist polity aims at the exchange of citizenship; the main goal of secession consists in the abolition of the former citizenship and the establishment of the preferred one. For the leave of a supranational building I therefore would suggest to speak of cancellation of membership rather than of secession. However, the inclusion of a right to leave the treaty, not a right to secession, can be favorable for the emergence of a political union; the granted possibility of legal withdrawal makes entry easier and backs up membership psychologically and politically (Buchanan 1991: 37).

This study attempts at defining normative categories which can meet the requirements of the practice of international law exerted by existing international legal institutions. It does not attempt to contribute to a theory which misses the crucial point that state existence first of all stands in need of being confirmed by the international community.² Such an approach has since been lacking. Ideal-liberal theories dealing with the issue of ideal consent of the individual and the state, the state's profoundly questioned legitimacy and teleological justifications of its sovereignty (Wellman 1995: 154f.) lack the crucial role the international community plays in secessions. Theories

² I wish to thank the anonymous referee for his helpful comments on this point.

based on the principle of "remedial right only" (Buchanan 1997: 61) favoring the establishment of a limited right of secession as remedy for suffered injustice neglect the fact that secession can be claimed for as prevention. They also miss the peculiar status of self-determination in international law, and the practice which has to consider both international stability and self-determination of single polities.

Given the current practice of international law, the secessionist entity has to convince the international community not only of its own legitimacy, but also, that the sovereignty of the state from which it wishes to exit, lacks legitimacy. International legal institutions thus are dealing with the problem of legitimacy of emerging states. Buchanan has pointed on the importance of improving the existing legal international institutions rather than developing ideal theories of secession (1997: 61). The example of FYR Macedonia, however, will show, that the approach to legitimize secession as 'remedial right only' (Buchanan 1997: 60f.) does not represent a theory sufficient for the legitimacy of secessionist movements. I therefore attempt to show that criteria of legitimacy of "secession plus state-formation" movements have to meet distinct requirements in order to be recognized by the international community. What are these requirements based upon?

Let me now present my definition of secession and, in the sequel, the three-folded model of secessionist legitimacy.

I define "secession" for the purpose of this article as follows: by "secession as secession plus state-formation" I understand a separatist movement undertaken by a distinct polity led by the wish to withdraw the territory it inhabits from the originary state. The secessionist process has been successfully accomplished, when the polity's sovereignty has been established in correspondence with the change of citizenship. Also, the new borders as well as the status of legal subjectivity of universal international law must be recognized by the members of the international community.

According to the principle of state sovereignty constituted by the three elements of *governmental rule*, *territory* and *nation*, the legitimacy of "secession plus state-formation" is immediately connected with these three elements: *the legitimacy of Who, Why and How*. With other words: Who represents the governmental rule of the polity, Why has sovereignty to change, and How, by which means, is the change of sovereignty undertaken? Therefore, I shall investigate the legitimacy of secession in three steps structured accordingly in three sections: the first section deals with the legitimacy of *Who*, the actors in power, e.g. the political leaders initiating, promoting and/or negotiating secession. As the relation between actors and polity consists in a power relation, the model of "legitimate power" (Beetham 1991) shall be presented as prerequisite. In the second section I shall analyze the legitimacy of *Why*, the legitimacy of the secessionist claim.

This section concerns the fundamental justification(s), why the territory's sovereignty should change; basically, these justifications entail specific arguments of cultural preservation, self-defense, sovereignty as a moral reward, a remedium for discrimination and injustice suffered in the past. The legitimacy of *How*, the procedure undertaken by the actors in order to initiate and promote the political process toward sovereignty, will be object of the third and last section. The way how the claim is dealt with by the political representatives of the polity is of crucial importance for the neighboring states and the international community, because the future state's ability to maintain political and territorial stability is mirrored by the procedure chosen.

I shall illustrate the model of secessionist legitimacy by three examples of secessionist processes in recent history: Slovakia as example of a successful secession, FYR Macedonia as questioned secession and Chechnya representing a failed secessionist movement. Due to restraint of space I cannot not give a detailed analysis of the developments of the countries chosen; details not being of immediate impact for the secessionist developments shall be neglected. I am aware of this reduction in historic precision; however, this is the prize paid for a more general and theory-oriented investigation whose aim is to contribute to the issue of secession by formulating normative criteria acceptable to the practice of international law. Due to the "legal vacuum" of the issue, e.g. the mentioned lack of clear definitions of "secession" and "nation" and the general lack of a right of secession, the assessment of secessionist legitimacy has to consist of normative and descriptive elements. For the sake of theoretical principles capable of being applied to the topical political realities and the practice of international law, the analysis of empirical examples represents a crucial condition. Therefore, a 'mixture' of normative and descriptive arguments is unavoidable.³ Before presenting the three-folded model of legitimacy, let me remind the reader of some commonplaces.

Without any reluctance, the international community recognized Slovakia's statehood, and with this, the Slovak secession. The dissolution of the Czechoslovak Federation was not hindered by the Czech Republic neither. The international recognition of FYR Macedonia's sovereignty, declared in 1991, was delayed due to Greece's obstruction policy; eventually in 1993, UNO and EU recognized her independence. Greece did not question Macedonia's sovereignty, but protested vehemently against the name of the new state since she regarded the concept "Macedonia/Makedonija" as well as the flag symbol showing the 16-rayed "Sun of Vergina" as Greek national property. Only with the increasing crisis in Kosovo and after mediation by Richard C. Holbrooke, the Greek-Macedonian compromise came into being in

³ I thank the anonymous referee for drawing my attention on this crucial point.

1995; the two Greek blockades of the port of Thessaloniki back in 1992 and 1994 had led to Macedonian trade losses amounting to more than \$1.5 billion (Ramet 1995: 226). Finally, the Chechen attempt to secede represents the most problematic of the country studies: after Chechnya had declared independence in 1991, Russia sent troops in order to prevent the secession. The 21-month war was officially ended with the signing of the peace pact in May 1997. Since the election of Aslan Maskhadov as president in January 1997, the secessionist movement has been carried on on political grounds; the discussion on the final Chechen exit from the Russian Federation, however, has been postponed for 5 years according to the agreement of August 1996 (Goble 1997). At the time of writing, Russia has intervened in Chechnya again.

Who – The Legitimacy of the Secessionist Actors

The secessionist polity's actors represent a crucial factor of secession. The group of representatives, the political elite, does not only initiate, promote and/or negotiate the secessionist process; it is responsible for the outcome. Since it exercises, generates and modifies power, its relationship with the ruled, is based on power. Referring to our type of "secession plus state-formation", it is very likely that the actors in charge of the secessionist process will also play a decisive role in the building of the new state. The relationship between the dominant and the subordinate thus demands some clarifying thoughts. Questioning the legitimacy of the actors means to put into question primarily the legitimacy of power in general. What does legitimate power mean? Which conditions or features are required to describe a power system as legitimate, to determinate the actors as legitimate? Is legitimate power merely a matter of charismatic individuals, of distinct institutional prerequisites or a reference to historically grown traditions and customs?

According to the Weberian notion of legitimacy as "belief in legitimacy", legitimacy seems to represent a static concept depending merely on the people's approval of a regime as legitimate by virtue of their beliefs. This would mean that the regime in power can be described as legitimate, if people do believe in its legitimacy, e.g. in the legitimacy of rational-legal, traditional or charismatic rule. However, the relationship between "legitimacy" and people's beliefs in legitimacy requires a theoretical clarification: a regime in power is not legitimate, because people believe in its legitimacy, but because its rule can be expressed, justified *in terms* of their beliefs (Beetham 1991: 11). When assessing the legitimacy of a power relation, the people's belief in the regime's legitimacy constitute one factor, but more importantly: what makes people believe in the legitimacy of a regime, when do they stop believing, on which grounds do they judge a regime as being legitimate or illegitimate, when and by which actions does power turn from legitimate to

questioned to illegitimate power? Three factors render a regime legitimate: the legal validity, which underpins the acquisition and exercise of power, the importance of the rules according to current values and beliefs of the polity and the evidence of consent expressed by action (Beetham 1991: 12f.).

The first and basic level of legitimacy is that of the conformity of rules: in order to describe a power relationship as legitimate, the acquisition and exercise of power has to correspond with the principles of law, the constitution. Rules do not necessarily have to form a legal codex, they may exist also in an unwritten form as a society's informal conventions or customs. However, societies tend to formalize the rules of power in order to resolve and prevent disputes on power; the authority of the legal codes and the application of the law are acknowledged as final, since due to their validity every individual of the society is subject to the legal system, the powerful as well as the subordinate.

The existence of a legal system, however, is not sufficient a factor for the legitimacy of power, as the legal codes, the rules guiding the acquisition and exercise of power, require justification themselves. The second level of the legitimacy of a power relation thus consists in the extent to which the legal rules can be justified in terms of beliefs shared by both dominant and subordinate (Beetham 1991: 17). Beliefs in a given society change, as the historic examples of women's right to vote and the end of slavery have shown. The relationship between conventions or customs are fluently changing: customs can turn to legal codes and elder legal principles can disappear from the codex due to the significant lack of actuality. The importance of beliefs, to which extent power, its acquisition and the rules of exercise are justified, lies in their function of serving as source of final authority, the common sense: to be justified in terms of the beliefs shared by the powerful and the subordinate, the rules must provide that those in power are capable of its exercise and that the power system expresses the general interest (Beetham 1991: 17). The fact, that in most of the Eastern and Central European satellite states the abolition of the section fixing the single rule of the Communist Party was the first demand on the dissidents' agenda, demonstrates that the legal code lacked justification in terms of the citizens' beliefs and values.

Finally, the third level of legitimate power relates to the public: a power relationship can be said to be legitimate, if evidence of expressed and popular consent features the relation between subordinate, the power system and those in power. To make sure, that the citizens agree with the characteristic features of the power relation and the powerful in charge, the expression of consent requires explicit action such as swearing an oath, participating in an election, agreements or initiative rituals. The importance of publicly expressed consent consists in its contribution to legitimacy (Beetham 1991: 18): the evidence of consent actively undertaken by the sum or single repre-

sentatives of the citizens has a subjectively binding force, which represents a normative commitment. The publicly expressed acknowledgement obliges those taking part to follow the rules of loyalty by virtue of their own credibility in front of the public. Regardless of the distinct individual motives, it is important that the consent is expressed publicly. The transparency or publicity of the ritual, in Soviet terms once called *Glasnost* signifying everything, what can and must be publicly spoken about, fulfills the need for confirmation of the powerful and the power system. I would interpret Gorbachev's program of *Glasnost* as a test of legitimacy: a test to check public consent as well as the justifiability of the policy of *Perestrojka* (Transformation). The crucial question, however, was not so much, whether the subordinate would confirm the new policy, rather, whether the fundamental basis of Marxist-Leninist power, the Party's rank and file, shared the beliefs of the Central Committee and Politburo.

To conclude the theoretical prerequisites, the legitimacy of a power relation does not exist as an ideal 100% legitimacy of the political leadership, nor of the political system; in any given society, a critique of power and the power system exists. Also, as mentioned above, the validity of legal codes and rules is perpetually changing; so are people's beliefs which are underpinned by normative values. To be legitimate, a power relation thus stands in need of fulfilling three conditions: conformity to rules of legal validity; justifiability of the rules in terms of beliefs shared by both subordinate and the powerful; actively and publicly expressed consent (Beetham 1991: 20). Let me now investigate, whether the actors of the cases chosen fulfill the conditions of legitimate power.

HZDS and Meciar – Slovakia's Actors

How legitimate are the secessionist actors? Applying the model of legitimacy of power, I shall in the sequel analyze the legitimacy of the Slovak, Macedonian and Chechen actors in charge.

The Slovak representative Premier Vladimir Meciar was democratically elected in the parliamentary elections in June 1992. His party HZDS as well as ODS, the party of Czech Premier Klaus, gained the plurality of the seats of the Federal Assembly, though not absolute majorities. Slovakia's economic situation deteriorated after the resignation of the Communist Party due to the prevalence of the large state-owned enterprises of the heavy industry, mining, smelting and arms sectors. The reform strategy developed by Klaus led to massive protests in Slovakia. While Klaus favored an economic shock-therapy, Meciar argued for a slower pace in the privatization process (Kirschbaum 1995: 268). Also, the common future of both nations was questioned; Slovak nationalism emerged as consequence of Czech

dominance of the Communist Federation and the First Republic's democratic system. The talks on the Federal competencies did not lead to a compromise. The final negotiations between the two Premiers in summer 1992 reached a standstill, since the positions were too diametrically opposed as to unify Czech and Slovak policy: Klaus and Meciar chose the option of separation (Vodicka 1994: 181). Although the secessionist initiative clearly came from the Slovak side, the Czech Premier agreed with the separation of the country. The legitimacy of the democratically chosen actor Meciar and his party HZDS (Movement for a Democratic Slovakia) was not questioned by the international community. The new state due to start its existence on 1 January 1993 was recognized without any reluctance. Also, Meciar (and with him, Slovak sovereignty) was ex post confirmed as Prime Minister in 1994; until the parliamentary elections in September 1998, which put an end to the rule of HZDS and Meciar, the actor responsible for Slovak secession enjoyed high popularity among the citizens. Applying thus the dimensions of legitimacy to the Slovak secessionist actor, I can state that: a) the election of the prime minister corresponds with the rules of power of the multi-party system which emerged after the end of socialist rule. Meciar's acquisition and exercise of power did conform with the legality required for democratic rule. However, the conformity of the secession in terms of the constitution seems problematic; I shall refer to this in the final section as it represents a problem of procedural legitimacy; b) The new rules of democratic power have been justified in terms of the beliefs of the subordinate. Particularly in Czechoslovakia, the new strata of politicians could emerge only out of the formerly ruled, as the harsh totalitarian system established in the "Normalization Period" in the 1970s purged the party from even a minor opposition; c) The legitimacy of both the premiers was based on public consent expressed in the elections. The evidence of consent publicly expressed had been forced under communist rule; the collapse of the party's single rule, its absolute delegitimation, was triggered by the withdrawal of popular consent (Beetham 1991: 20) in the general strike in December 1989. Because the lack of legitimacy of the Czechoslovak Socialist Party *de facto* had started with the post-1968 establishment of a noticeably conservative government, the absolute loss of legitimacy can be interpreted as a steady process developing during a 20 year period. The party's declining legitimacy was enforced by the existence of the dissident group *Charter 77*; therefore, the collapse of 1989 was absolute and final.

IMRO and the Socialist Government – FYR Macedonia's Actors

The actors initiating and promoting the Macedonian exit from Yugoslavia had to face significantly bigger difficulties on their way to state sovereignty.

With the crisis triggered by the Slovenian and Croatian secessionist processes, the democratically elected leadership was challenged by the threat of having to join Serbia and Montenegro in the Croatian war. Already in August 1989, the Macedonian communist government had abolished the principle of its single rule; the first multi-party elections took place in November 1990. In January 1991, the Assembly adopted the declaration of Sovereignty, which was confirmed in September by 65% (50% required) of the populace. The main secessionist actor was IMRO-DPMNU (Inner Macedonian Revolutionary Organization – Democratic Party of Macedonian National Unity), the winner of the 1990 elections and coalition partner of the SMK-PDP (Communist Party Macedonia – Party for Democratic Prosperity). As a party with a historic predecessor (Boeckh 1996: 331ff.), IMRO played a national ticket and consequently engaged for exit.⁴ In contrast, the former communists under the elected President Kiro Gligorov had favored the Republic's independence within the framework of a reformed Yugoslav Federation based on common currency, foreign policy and army. IMRO's claim for Macedonian state sovereignty was strengthened by the argument of non-involvement in the war, which gained massive support among the army and the population. The military drafting had already started, when President Gligorov's negotiations with representatives of the Yugoslav National Army led to the withdrawal of the YNA troops from Macedonian territory in April 1991. Macedonia was *de facto* sovereign, but not yet *de jure* since the international community was reluctant to recognize the republic's sovereignty.

How legitimate were the Macedonian actors? a) Similar to the Slovak case, a newly emerged party took the initiative for secession. One of the core problems of democratic transition consists in the "time-gap" the constitution is subject to: the secessionist process was "overtaking" the adoption of a new constitution which retrospectively provided the secession with legality. However, the fact that IMRO was democratically elected, speaks in favor of dimensions a) and b): the relation of new democratic rules was justified in terms of the beliefs and values of the citizens. Untypical for a socialist-turned-democratic society, however, was the fact that both the populace and the Socialist government shared democratic values and beliefs and

⁴ IMRO was founded in 1893 in Saloniki; primarily a revolutionary organization fighting against Ottoman rule, the party initiated the Ilinden (St. Elijah's) uprising in 1903. The independent Republic of Krushevo, established as Macedonian national state after the first successes of the uprising, did not survive a fortnight. It was crushed by Osmanli authorities (Boeckh 1996: 331ff.). The Republic represents the only national self-expression of the Macedonians until the Comintern recognized the Macedonian nation in 1934; due to the assimilation policies exerted by the neighboring states Greece, Serbia and Bulgaria, Macedonian nation-building did virtually not exist before the building of the Yugoslav Federation (Perry 1997: 229).

avored the option of democratic transition. The self-restrictive policy of the Macedonian League of Communists as well as President Gligorov's popularity helped to maintain the party's legitimacy; c) IMRO as the initiative actor and SMK (now SDSM – Social-Democratic Party of Macedonia) as its coalition partner have been supported by popular consent; the legitimacy of the elected actor IMRO has not been questioned. Anti-secessionist protests among the Albanian minority, which amounts to approximately 23% of the population (Government Census Data 1994), did not question the legitimacy of the actors, but the legitimacy of the conduct of the referendum.⁵ I shall return to the Albanian critique below. Greece's protests against Macedonian sovereignty were based on the choice of name; the section below will deal with the Greek critique of the legitimacy of the secessionist claim.

Dudaev and Maskhadov and Troops– Chechnya's Actors

The Chechen attempt to withdraw from the Russian Federation failed. A further discussion on the future of Chechen sovereignty has been postponed to the year 2001. Before analyzing the legitimacy of the Chechen actors, let me clarify my standpoint: the peculiarity of the Chechen failed secession is based on the fact that she has been part of Russia for 400 years. The former nuclear super power is still regarded as an influential global actor regardless of the break-down of communism and the dissolution of the Soviet Union. Notwithstanding should Chechnya enjoy sovereign statehood, all the more as she had been forced to live under Russian rule; however, Russia's will to keep the Caucasian Republics under her jurisdiction might be primarily based on economic reasons: access and control of the Caspian oil fields. Even though the international community openly criticized the way how Russia carried out the campaign and still does so, no country was willing to jeopardize its relations with Russia because of the small Caucasian Republic's claim for sovereignty (Baker 1997).⁶ The point I wish to make is the following: although the international community's reluctance to recognize Chechnya's sovereignty is mostly based on fears of Russia's power, the actors in Grozny also lacked legitimacy. Apart from the chaotic circumstances and the violations of human rights committed by both sides, some actions in the war- and post-war period led to serious doubts whether the sovereign

⁵ According to the Government Census of 1994, the ethnic composition of the Macedonian populace is as follows: total 2'075'196 persons, of which are 66.5% slav Macedonians, 22.9% Albanians, 4% Turks, 2.3% Roma, 2% Serbs, 0.7% Muslim and 0.004% Vlachs (Government 1994 Census Data).

⁶ The Inauguration Ceremony of President Maskhadov was characterized by the complete absence of foreign representatives. Russia had threatened to break off relations with any country, that established diplomatic ties with Chechnya (Baker 1997).

Chechen state would be capable of establishing internal and external peace and stability. The ability and will to respect human rights were and probably still are a matter of further concern.

A clear identification of the Chechen secessionist actors seems to be difficult, because the dynamics of the war led to the emergence of rebel groups, such as the command of Shamil Basayev. Neither the democratically elected leader Dudaev, nor Maskhadov, elected as President in January 1997, seemed to be in full control of the troops (BBC, Profile). Elected in October 1991, President Dzokhar Dudaev declared Chechnya's sovereignty in November. The new Constitution adopted in March 1992 declared Chechnya as an independent and secular state governed by a parliament and president (BBC, Profile). Russia refused to recognize both the declaration of Independence and the election of Dudaev; Russia's increasing loss of control, Dudaev's own lack of legitimacy among the troops and the hostage-taking of Russian soldiers finally led to the invasion in 1994. While Dudaev's and Maskhadov's acquisition and exercise of power did conform to the legal codes justified by shared values and beliefs of the population in 1991 and 1997 and were confirmed *ex post* by the adoption of the Chechen constitution, the elected leaders did not gain full legitimacy among the troops. The relationship between the political leader Maskhadov and the population has been legitimized by the consent expressed in the elections recognized by the Russian government (Baker 1997);⁷ however, beliefs and values concerning particularly the procedural details seem to divide the leadership from the rebel groups. The consent required for full legitimacy of the secessionist actors is therefore questioned. The human rights violations, a crucial point of the Chechen procedure, will be discussed in the final section. Let me pass to the legitimacy of the basic argument, the contents of secessionist claims.

Why – The Legitimacy of the Claim for Secession

While the legitimacy of the secessionist actors is determined by the conformity to the categories of legitimate power listed above, the legitimacy of a secessionist claim is directly linked with the problem of self-determination. Self-determination as principle of universal international law was regarded as basic and legitimate argument in the period of decolonisation. However, self-determination does not necessarily mean independent statehood, since it

⁷ Maskhadov, a former military commander and separatist Prime Minister, has been officially recognized as Chechen representative by Russian Security Council chief Ivan Rybkin. The Inauguration ceremony was attended by Rybkin and Lebed as representatives of President Yeltsin (Baker 1997).

can be established within the given state by agreements granting the minor polity a larger extent of autonomy. Collective rights can grant the minority the use of its language as official administrative language of the territory inhabited; also, measures to enhance the administrative body's autonomy seem to be supportive of the prevention of secessionist movements (Baer 1999). According to international law, the collective right of self-determination can be interpreted as offensive, defensive or neutral, given the originary state's territorial sovereignty as relevant category (Thürer 1997: 45ff.). Secession thus represents the claim for the collective right of offensive self-determination, because it is directed against the originary sovereignty.

The question to be answered thus is as follows: What makes the claim for secession, more precisely, the claim for the transfer of sovereignty, legitimate? Which conditions must be fulfilled to justify a polity's demand for a territory, the industrial, military and administrative facilities included? Which arguments are most likely to convince the international community of the legitimacy of the secessionist claim?

Generally, one could argue that every polity with a legitimate political representation and clearly defined borders is entitled to form a state of its own. In contrast, an unclear border situation accompanied by claims for additional parts of the territory of the pre-secessionist state are likely to question the secessionist movement. Had, hypothetically speaking, Macedonia's sovereign statehood entailed the inclusion of parts of Western Bulgarian territory inhabited by the Macedonian minority, the international community would have had to face a secessionist movement linked with an irredentist claim to enlarge the secessionist territory. As precedence, the recognition of such a new state would immediately serve as legal fundament for justifying similar claims. The aim to change given state borders in order to reconstruct national and ethnic homogeneity, however, cannot be of interest for the international community. Bosnia's example has clearly demonstrated, to which extent stability can be threatened by a policy attempting to realize homogeneity. Thus, secessionist movements, which refer to a given and unchangeable territory, are more likely to be recognized than movements claiming additional territorial units; they represent an immediate threat of regional stability.

Further, since most of the secessionist territories enjoyed a distinct extent of administrative autonomy in the past, the argument of already existing state structures could indeed be favorable for recognition. While Chechnya still has the legal status of a Republic of the Russian Federation, the Soviet successor states like Ukraine, Belarus and Kazakhstan, the Slovak Republic as well as the Macedonian Republic had existed as distinct territorial and administrative units within federative structures. However, the practice of international law has shown, that the recognition of "secession plus state-

formation" is considered according to three categories: first, *recognition as remedium* for institutionalized, massive and permanent discrimination and violations of human rights suffered by the polity (for example Bangladesh and East Timor); human rights violations by a state ideology (Soviet Republics, Yugoslav Republics); conquest, occupation, annexation (Soviet Republics, especially the Baltic States). Second, *recognition as prevention* of political and economic discrimination expected to happen or to continue in the future on the strength of evident experience in the past (Slovakia), self-defense (FYR Macedonia). The third category of recognition could be described as *recognition as normal case* (to a certain extent Israel), where self-determination and statehood of a diaspora polity is acknowledged. While recognition as remedium, as reward for injustice suffered in the past, and recognition as preventive self-protection can be justified by the principles of international law, the third case is *de facto* very rare. All the more so as this classification represents an ideal undertaken for the purpose of suggesting normative criteria of international recognition. In reality, secession, state-formation and the arguments justifying both claims rarely happen to correspond with these ideal categories. Thus, how legitimate the actors in power and the claim for "secession plus state-formation" might be considered of, the third step of my analysis can be regarded as "litmus test": the legitimacy of the procedure represents a *conditio sine qua non*, since the way, how the secessionist process is undertaken, will provide the international environment with crucial information about the state-in-the-making and its leaders. But first, how legitimate are the secessionist claims of the countries chosen?

Slovakia's Claim

Slovakia's secession has been legitimized not only by nationalist arguments on behalf of the Slovak citizens; the deep disagreement on the future course of the Federation's economic transformation has also been a legitimate argument for secession, in that secession is seen as a means of preventing future economic discrimination. Also, the chance for political and economic self-determination was historically given. Eventually, the Czech recognition of the Slovak claim enhanced the legitimacy of Slovak statehood (Haverland 198: 387).⁸ An additional positive fact was that the Slovak secession never represented a serious challenge to the international community, be-

⁸ While the recognition of the secessionist unit's newly acquired statehood by the predecessor state was considered the indispensable expression for the transfer of sovereignty in the past, present doctrine of international law acknowledges original emergence of States as subjects of international law. Recognition by the predecessor state thus is regarded only as ascertainment of previous sovereignty (Haverland 1987: 38).

cause the Federation's dissolution had been carried through under the jurisdiction of both its constitutive governments.

FYR Macedonia's Claim

FYR Macedonia's exit argument seemed to meet the requirements of legitimacy, the more as the Federative Constitution explicitly granted the right of secession (Haverland 1987: 385). With the increasing threat of future involvement in the war secession was justified as self-protective measure. Macedonian citizens did not want their soldiers to fight for an already lost Federation. Together with the former autonomous Republic of Kosovo, Macedonia was the least developed member of the Federation. Thus, when peaceful coexistence with Serbia and Montenegro ceased to be an option, the "last Titoists" decided to secede. However, the international community back in 1991 was reluctant to recognize Macedonia's sovereignty due to the lobbying of Greece. The national-chauvinist Greek policy did not object to the state sovereignty of the former Yugoslav Republic, but to the name and the flag symbol, which were conceived of as being Greek national property. Even if historic arguments provided the Greek position with a certain extent of justification, the principle of self-determination includes the free choice of name.⁹ Greece's obstruction policy evoked an additional instability in the eastern Balkans, which was only contained by the increasing crisis in Kosovo and the political will of the Macedonian government for a compromise. Greece's chairmanship of the EU was to begin in January 1994; in December 1993 the EU members France, Great Britain, Germany, Italy Denmark and the Netherlands recognized Macedonian statehood under the provisional name of FYR Macedonia before submitting a complaint of Greece's violations of the Maastricht Treaty's trade rules to the European Court of Justice. For the case of delayed Macedonian sovereignty, a limited right of secession, which would determinate secession as legitimate measure of self-protection, would have been favorable; however, the international reluctance indirectly supported the Greek boycotts and increased Macedonian trade losses.

⁹ I am aware of the problem of the term "Makedonija" which can connote region, state, language, nation, and nationality. However, my point is that such struggles can be negotiated at international institutions in a peaceful and constructive fashion. I therefore regard the Greek policy as highly dangerous and an unnecessary threat to the Balkan region's unstable situation in the early nineties.

Chechnya's Claim

Finally, the Chechen claim for "secession plus state-formation" represents the most sensible case of our examples. Chechnya's claim for sovereign statehood was underpinned by historic and national arguments: since the Chechens by virtue of being a nation had lived under "the Russian yoke", the actual political situation in 1991 provided a chance to claim for sovereignty. The absence of previous Chechen statehood due to the Russian conquest in 17th Century and the wish of self-determination in a state of its own as remedium for past unjust rule seem to justify Chechen secession and its immediate recognition. However, the international recognition failed to appear. As mentioned above, Russia is considered a global actor too influential as to risk jeopardizing seriously relations tying her to the international community. Also, the Chechen claim for a sovereign state is immediately connected with the peculiarities of its procedure. This will be discussed in the section below.

How – The Legitimacy of Secessionist Procedure

International law lacks precise definitions of procedural details favorable for international recognition. This seems to be a causality of the principle of self-determination, since the distinct fashion in which a polity expresses its sovereignty is directly determined by the actors and the basic secessionist argument. As mentioned before, I regard international recognition of a secessionist movement as a three-faceted task. Thus, this section is dedicated to the third and last step, the legitimacy of the procedure undertaken. The procedural details, the fashion how a polity promotes its claim for secession, leads to assumptions determining the new state's ability to manage, keep and exercise sovereignty in the future. Before I pass to the final analysis of our country cases, let me in the following make some general remarks on a peculiar issue, which is directly related to procedural legitimacy: the question of participation in a secessionist movement.

Who is entitled to the right to participate in a secessionist process? Given the above mentioned legitimacy of the actors based on popular consent of the ruled, how should we deal with the deliberate exclusion of a distinct community from the secessionist process? Referring to the examples of Lithuania, Estonia and Latvia, the argument, that colonists and the descendants of the nation occupying a country, had no moral right to have a voice in the decision whether to secede (Buchanan 1991: 159), seems convincing at first sight; all the more as secession is claimed for as remedy. The membership of the former independent Baltic Republics in the Soviet Union was based on occupation and annexation. The claim for sovereignty as reme-

dium for unjust conquest in the past meets the moral condition required for a legitimate secession. However, considering the pragmatic difficulties in determining, who has been a Soviet "colonist", a "descendant of colonists" and who is a "normal" Lithuanian, Estonian or Latvian citizen of Russian origin working, living and paying taxes in the country, the argument seems not only to lack pragmatism. Far more, it serves as a theoretical basis for an exclusionist, nationalist policy triggering a process of discrimination and by doing so, provoking a further secessionist movement.

I shall put my argument more generally: the discrimination of a minority living on secessionist territory and connected with the former ruling government by ethnic, national, religious, ideological or whatever ties can neither be justified by the "preventive" nor the "remedial" argument. The "preventive" argumentation is based on the assumption, that the minority in fear of its further discrimination or even extinction will immediately call the former power for defensive assistance. Therefore it represents by its very nature a crucial obstacle on the polity's way to statehood. According to the martial logic of the nation's survival, the minority thus cannot be given equal rights. These mono-causal dynamics based on mere assumptions and prejudices characterize to a large extent irredentist movements which I will not deal with here. The "remedial" argumentation, on the contrary, focuses on the past status of the ruling minority; although retaliation is psychologically understandable, new discrimination cannot be justified by reference to suffered discrimination. From an ethical point of view, neither a "balance of discrimination" nor "a right to remedial violence" can be justified, because the consequences of such mathematics would entirely destabilize the international system. Retaliation thus is barely a reasonable way to re-establish justice. Therefore, secession cannot be argued for by claiming for a remedy for suffered discrimination while committing discrimination at the same time, regardless which polity might be concerned. The deliberate exclusion of a distinct number of citizens from the right to participate in political decision-making, whose consequences they will be subject to as everybody else, represents only a further spiraling down of the already existing gap between the communities. Even if such an exclusionist policy is legitimized by popular consent of the secessionist polity at the ballots meeting thereby the conditions of free and democratic elections, it lacks legitimacy since it fosters unequal treatment and violates the political rights of members of a distinct group. The consequences of such a discrimination will indeed fulfill the secessionist polity's original fears: the minority lacking equal rights will have to search for alternatives in order to promote its political representation. In need of pure self-interest it also has to develop a potentially disloyal disposition toward the new state. A state-in-being excluding a minority from political participation does not sufficiently convince of its ability and will to

respect the rights of its citizens in the future, regardless, on which grounds the minority is constituted.

Interestingly, the Macedonian secessionist procedure entailed the very contrary of the above mentioned exclusion; the legitimacy of the procedure is questioned. Let me therefore finally pass to the countries' procedures and the analysis of their legitimacy.

Slovakia's Procedure

The procedural details of the Slovak secessionist movement did correspond largely with the Czech political course. This exceptional case could be described as an ideal secession. Both sides, merely united in the wish to get rid of the other, agreed on the issue of Slovak secession, which was further enhanced by the civilized manner in which the separation was negotiated. Also, the decision to secede was legitimized by the Czechoslovak Federal Parliament, which voted for the separation (Kirschbaum 1995: 270). However, according to the old Federative Constitution, neither of the democratically elected Prime Ministers of the Czech Republic and Slovakia were legally enabled to abolish the Federation: a plebiscite would have been required (Vodicka 1994: 182). The argument, that the Slovak secession lacked procedural legitimacy since it was not justified by a plebiscital ballot, was further strengthened by a survey carried out in 1991: according to the survey's results only 6% of the Czechs and 11% of the Slovaks would vote for separation (Vodicka 1994: 181). However, after the Slovak secession had been negotiated, neither Czech nor Slovak political parties attempted to question the separation by promoting a policy, which aimed at the rebuilding of the Federation. The main reason of the citizens' acceptance might have been passivity.¹⁰ Although the Slovak secession was not confirmed by direct democratic voting, the actors were democratically elected members of Parliament. I therefore regard the conduct of the separation as legitimate since it met the requirements of a legitimate procedure respecting the rules of the representative democratic system.

FYR Macedonia's Procedure

Although the Macedonian secession was legitimized by the referendum confirming the secession *ex post*, the conduct of the referendum lacked legiti-

¹⁰ The point of civic passivity which resulted in the acceptance of the separation was confirmed by Dr. Dusan Kovac, historian and General secretary of the Slovak Academy of Science, as well as by Mr. Ivan Miklos, Vice-chairman of the government of Prime Minister Mikulas Dzurinda. My interviews with Dr. Kovac and Mr. Miklos took place in January 1999 in Bratislava.

macy due to a crucial detail: it was not limited to Macedonian citizens inhabiting the territory of the Republic but extended to all Macedonians regardless of their place of birth or place of living. The legal distinction between citizenship and nationality therefore was violated (Danforth 1995: 143). The only category of identification was the self-ascription of the voters of being Macedonian, e.g. of Macedonian nationality and South Slav ethnicity. This questionable inclusion of Macedonian diaspora groups in all parts of the world led to the boycott of the Albanians: the community refused to participate in the census in 1991. The grave mistake of extending the referendum, however, seemed to have led to an improvement of Macedonia's minority policy: challenged by radical Albanian claims for the status of a state-constitutive nation as well as by similar Serb claims, the Macedonian governments have since understood to balance these difficulties by a policy of integration to NATO and the EU. The Albanian community's fears of future cultural and economic discrimination in the Macedonian nation-state have been weakened by the policy of integrating elected Albanian members of the radical PDP-A to the government of Ljubcho Georgievski (IMRO), elected in 1998. Since Georgievski's government did not need the backing of the Albanians, as the coalition of IMRO and DA (Democratic Alternative) had a clear parliamentary majority, these measures demonstrate the government's soundness in dealing with minority issues.¹¹ Also, in 1993, the Assembly had established the Council for Inter-Ethnic Relations which consists of members of the minority communities dealing with the improvement of inter-ethnic relations and integration issues (Jakimovski 1994: 39). Since her decision to secede, Macedonia was capable of finding a way to cope with the difficulties and dangers of the Balkan region by pursuing a policy of respect of human and minority rights. The close cooperation with the international organizations OSCE and NATO, particularly during the Kosovo crisis, the respect of democratic principles and a pragmatic way of dealing with the difficulties typical for the multi-ethnically composed region have made the country a factor of stability in the eastern Balkans.

¹¹ The outcome of the 1998 parliamentary elections: IMRO-DPMNU 28,1%, DA (Democratic Alternative) 10.7%, together 59 seats, SDSM (Social-democratic Union of Macedonia) 25.1% and 29 seats, PDP, PDP-A and NDP (National Democratic Party) 19.3% and 25 seats, LPD/DPM (Liberal-democratic Party / Democratic Party of Macedonia) 7.0% and 4 seats. The smaller parties representing the Roma, the Turks, the Serbs, the Vlachs and the Socialists gained together 4.7% and 3 seats (polis.net/macedonia).

Chechnya's Procedure

Reports on rival groups fighting against the Chechen command and committing human rights violations made political support virtually impossible for the international community. Since Russia withdrew her troops in spring 1997, Chechnya was *de facto* independent; the government under President Maskhadov, however, failed to control the various criminal groups. Hostage-taking as source of income, kidnapping of foreign journalists and the killing of Red Cross workers were not helpful to convince the international community of Chechnya's ability to form a stable state respecting human rights and political agreements. Also, the confusion caused by the Russian intervention and the prevailing presence of various military commands claiming to defend Chechen independence did contribute to the international reluctance in recognizing Chechnya as independent state. As long as the wish for state sovereignty is expressed by violent actions endangering the immediate neighborhood of the Republic of Dagestan, neither support nor recognition will be considered by the international community. A future decision supporting Chechen independence will depend to a large extent on Russia's policy. At the time of writing, the second war between Russia and Chechnya seems to be likely to finish.

Concluding Remarks

Based on practice and principles of international law, this article concerned the analysis of criteria of secessionist legitimacy. Focussed on the "secession plus state-formation" case, the aim was to suggest normative political criteria crucial for the assessment of secessionist legitimacy. The fact that international law does not contain a right of secession nor a definition of the term "nation" led to the issue of international recognition: secessionist polities depend on international recognition of their sovereignty. Due to the "Janus-faced" character of the principle of self-determination, "secession plus state-formation" is still regarded as a potential source of international disorder. The secessionist polity therefore has to prove that the originary state's sovereignty lacks legitimacy. At the same time, by doing so, it has to demonstrate convincingly, that the exit process fulfills the requirements demanded for the recognition of its statehood. The tendency to recognize only secessionist movements which claim for sovereignty as reward for unjust rule (Buchanan 1997: 61), lacks measures for dealing with the seldom but existing cases of preventive secession. As the cases of Slovakia and Macedonia have shown, self-protection as measure to prevent expected discrimination must be a factor considered for the recognition of a new state. Even more so as the legitimacy of the actors, their justification of the secessionist

claim as well as the procedure undertaken demonstrated the will to exit. With other words: the claim for secession can be legitimized by various historic, preventive (self-protection) and remedial (unjust sovereignty) arguments; however, the legitimacy of the actors approved by popular and public consent and the procedure chosen (non-violent, non-discriminatory, negotiated, internationally monitored) are conditions necessary for recognition. Because "secession plus state-formation" lacks clear legal definition, the secessionist process has to be legitimate by meeting the needs of legitimacy of the actors (Who), the claim (Why) and the procedure (How).

The three-folded model of secessionist legitimacy presented in this paper aimed to contribute to the issue of which polity, why and by virtue of which procedure "secession plus state-formation" should be recognized. It attempted to suggest criteria relevant for the decision-making by legal institutions. To be legitimate, a polity has to prove, that its representatives, its claim for exit as well as the procedure chosen represent the common sense. Further, the actors, the claim and the procedure have to be approved by the polity on the grounds of shared beliefs and values. Particularly the relations with minorities represent the "Rosetta Stone" of the secessionist process: if the principle of citizens' equality is infringed by discrimination of a group, the internal situation of the future state is not likely to develop stability and peace. In this context, women's rights form an important issue. Although not a minority, women are still subject to unequal treatment in many countries. Thus, elections have to meet the conditions of free and democratic voting and must be accessible to all citizens of the secessionist territory.

Also, the citizens of the originary state should be entailed in the voting. Why? Given their majority, it seems very likely that they will prefer the anti-secessionist agenda. They therefore represent an obstacle to the exit process. However, considering the advantages of elections for the gathering of detailed information on citizens' preferences, the inclusion of the (assumed) anti-secessionist part of the populace in the voting offers an important possibility: negotiations between the polities can lead to a compromise in form of federal solutions and/or consociational agreements by virtue of which the minor polity enjoys granted share in power. Assuming the ideal case of international monitoring of the ballot, a further positive factor of the voting concerns the freedom of opinion-making: the voting requires free and equal access to media and the granted financial share for the pre-election campaign of the secessionist polity. Thus, even before secession has been object to democratic voting, the principles of equality of all citizens can be established in the pre-election period. As mentioned, the establishment of such ideal conditions seems highly idealistic; however, since I am convinced that free information represents a barrier against manipulative rhetoric and dynamics of both polities, pre-election monitoring and the democ-

ratio procedure as 'exit through voting' can help to diminish politically constructed and fostered incentives for violent actions. The procedure mentioned will further offer a clearer picture of how the secessionist polity and its representatives relate to the predecessor state and the minorities. A secessionist movement, which pursues a "preventive" and/or "remedial" agenda against a distinct group of citizens denying them human rights and equal treatment lacks decisively procedural legitimacy.

Finally, does international law in general require a limited right of secession? Such a right seems to be a two-edged sword. In the case of FYR Macedonia clear legal codes determining the requirements for secession and recognition would have been helpful. Also, additional international monitoring of the referendum could have helped to prevent the illegitimate extension of the vote to the diaspora groups, which represented a clear discrimination of the Albanian community and the smaller minorities. The advantage and disadvantage of such a right lie in its bargaining function: it can be made use of by a potentially secessionist polity as threat in order to establish and constitutionally grant minority rights. At the very same time, however, it can also block governmental rule on the long run and deepen the cleavage between the polities. A limited right topically determining self-protection and remedium could trigger secessionist processes and provoke instability since it questions the very source of stability of the states: the territorial integrity. Although the state of "Padania" was only symbolically established by the Northern Italian secessionist movement LEGA, such a right could be made use of by movements less humorous and more eager to realize their secessionist wishes by violent means.

To conclude, current history has shown, "secession plus state-formation" movements emerge generally because of human rights violations and permanent discrimination. The crucial moment where secession is opted for consists in the loss of belief that every other measure lacks efficiency. I therefore don't conceive of such a limited right to be required. In order to meet the requirements of international law, which are territorial sovereignty, international stability and the protection of human rights, I regard international monitoring as well as the criteria of legitimacy advocated for in this paper as crucial prerequisites.

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Wer, warum und wie: Beurteilungskategorien der Legitimität von Sezession

Mit dem Zusammenbruch der globalen Bipolarität war die internationale Staatengemeinschaft mit Unabhängigkeitsbewegungen in Ost-, Mittel- und Südosteuropa konfrontiert. Aufgrund des aussergewöhnli-

chen Zwangscharakters der sowjetischen und jugoslawischen Verfassungen sowie der Sowjetischen Hegemonie in Mitteleuropa kann der Wunsch nach Eigenstaatlichkeit als Summe einzelner Sezessionsbewegungen interpretiert werden. Der vorliegende Artikel untersucht Sezession als moralisches Problem des Völkerrechts und versucht, normative Kriterien für die Beurteilung der Legitimität von Sezession(en) zu definieren. Welche Bedingungen müssen erfüllt sein, damit eine Sezession als legitim gilt? Durch welche politischen, sozialen oder historischen Merkmale sollte eine legitime Sezession charakterisiert sein, um die Anerkennung der internationalen Staatengemeinschaft zu erhalten? Die vorliegende Analyse wird auf drei Ebenen ausgeführt: die Legitimität der Akteure (Wer), diejenige der Sezessionsforderung, das heisst des Arguments, mit dem die Akteure die Sezession begründen, und die Legitimität des Verfahrens (Wie). Die Beispiele dreier Sezessionen, der Slowakei, FYR Mazedoniens und Tschetscheniens sollen die Analyse verdeutlichen.

Qui, pourquoi et comment: Catégories de juger la légitimité de sécession

Avec la fin de la bipolarité la communauté internationale envisageait les mouvements d'indépendance en Europe Centrale, de l'Est et Sud-Est. En référence au caractère coercive des Constitutions Soviétique et Yougoslave, le désir pour l'indépendance d'état, pour la souveraineté se peut comprendre comme des mouvements sécessionnistes singuliers. Essayant à définir des catégories normatives supportives pour mettre un jugement des mouvements sécessionnistes, cet article est concerné avec sécession comme problème éthique du droit public. Qu'est-ce que sont les catégories nécessaires pour qu'une sécession soit jugée comme légitime? Quelles sont les caractéristiques politiques, historiques et sociales pour obtenir la reconnaissance internationale? L'analyse suivante est séparée en 3 niveaux: le niveau de la légitimité des acteurs (Qui), de l'argument sécessionniste (Pourquoi) et de la légitimité procédurale (Comment). L'analyse serait illustrée par les exemples de la Slovaquie, FYR Macédonie et la Chechnie.

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